

Office of the Secretary of Defense

§ 155.6

(5) Administer the program established by this part.

(6) Issue invitational travel orders in appropriate cases to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Designate attorneys to be Department Counsels assigned to the DOHA to represent the Government's interest in cases and related matters within the applicability and scope of this part.

(8) Designate attorneys to be Administrative Judges assigned to the DOHA.

(9) Designate attorneys to be Administrative Judge members of the DOHA Appeal Board.

(10) Provide for supervision of attorneys and other personnel assigned or attached to the DOHA.

(11) Develop and implement policy established or coordinated with the GC, DoD, in accordance with this part.

(12) Establish and maintain qualitative and quantitative standards for all work by DOHA employees arising within the applicability and scope of this part.

(13) Ensure that the Administrative Judges and Appeal Board members have the requisite independence to render fair and impartial decisions consistent with DoD policy.

(14) Provide training, clarify policy, or initiate personnel actions, as appropriate, to ensure that all DOHA decisions are made in accordance with policy, procedures, and standards established by this part.

(15) Provide for maintenance and control of all DOHA records.

(16) Take actions as provided for in § 155.6(b), and the additional procedural guidance in appendix A to this part.

(17) Establish and maintain procedures for timely assignment and completion of cases.

(18) Issue guidance and instructions, as needed, to fulfill the foregoing responsibilities.

(19) Designate the Director, DOHA, to implement paragraphs (b)(5) through (b)(18) of this section, under general guidance of the GC, DoD.

(c) The Heads of the DoD Components shall provide (from resources available to the designated DoD Component) financing, personnel, personnel spaces,

office facilities, and related administrative support required by the DOHA.

(d) The ASD(C3I) shall ensure that cases within the scope and applicability of this part are referred promptly to the DOHA, as required, and that clearance decisions by the DOHA are acted upon without delay.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994]

§ 155.6 Procedures.

(a) Applicants shall be investigated in accordance with the standards in 32 CFR part 154.

(b) An applicant is required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed by the DOHA to reach a clearance decision and to otherwise comply with the procedures authorized by this part. The applicant may elect on constitutional or other grounds not to comply; but refusal or failure to furnish or authorize the providing of relevant and material information or otherwise cooperate at any stage in the investigation or adjudicative process may prevent the DOHA from making a clearance decision. If an applicant fails or refuses to:

(1) Provide relevant and material information or to authorize others to provide such information; or

(2) Proceed in a timely or orderly fashion in accordance with this part; or

(3) Follow directions of an Administrative Judge or the Appeal Board; then the Director, DOHA, or designee, may revoke any security clearance held by the applicant and discontinue case processing. Requests for resumption of case processing and reinstatement of a security clearance may be approved by the Director, DOHA, only upon a showing of good cause. If the request is denied, in whole or in part, the decision is final and bars reapplication for a security clearance for 1 year from the date of the revocation.

(c) Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria in 32 CFR 154.7 and adjudication policy in appendix H to 32 CFR part 154, including as appropriate:

(1) Nature and seriousness of the conduct and surrounding circumstances.

(2) Frequency and recency of the conduct.

(3) Age of the applicant.

(4) Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

(5) Absence or presence of rehabilitation.

(6) Probability that the circumstances or conduct will continue or recur in the future.

(d) Whenever there is a reasonable basis for concluding that an applicant's continued access to classified information poses an imminent threat to the national interest, any security clearance held by the applicant may be suspended by the ASD(C³I), with the concurrence of the GC, DoD, pending a final clearance decision. This suspension may be rescinded by the same authorities upon presentation of additional information that conclusively demonstrates that an imminent threat to the national interest no longer exists. Procedures in appendix A to this part shall be expedited whenever an applicant's security clearance has been suspended pursuant to this section.

(e) Nothing contained in this part shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another Department or Agency to deny or revoke a security clearance when the security of the nation so requires. Such authority may not be delegated and may be exercised only when the Secretary of Defense or the head of another Department or Agency determines that the hearing procedures and other provisions of this part cannot be invoked consistent with the national security. Such a determination shall be conclusive.

(f) Additional procedural guidance is in appendix A to this part.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994]

APPENDIX A TO PART 155—ADDITIONAL PROCEDURAL GUIDANCE

1. When the DISCO cannot affirmatively find that it is clearly consistent with the national interest to grant or continue a secu-

rity clearance for an applicant, the case will be promptly referred to the DOHA.

2. Upon referral, the DOHA shall make a prompt determination whether to grant or continue a security clearance, issue a statement of reasons (SOR) as to why it is not clearly consistent with the national interest to do so, or take interim actions, including but not limited to:

a. Direct further investigation.

b. Propound written interrogatories to the applicant or other persons with relevant information.

c. Requiring the applicant to undergo a medical evaluation by a DoD Psychiatric Consultant.

d. Interviewing the applicant.

3. An unfavorable clearance decision shall not be made unless the applicant has been provided with a written SOR that shall be as detailed and comprehensive as the national security permits. A letter of instruction with the SOR shall explain that the applicant or Department Counsel may request a hearing. It shall also explain the adverse consequences for failure to respond to the SOR within the prescribed time frame.

4. The applicant must submit a detailed written answer to the SOR under oath or affirmation that shall admit or deny each listed allegation. A general denial or other similar answer is insufficient. To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer. The answer must be received by the DOHA within 20 days from receipt of the SOR. Requests for an extension of time to file an answer may be submitted to the Director, DOHA, or designee, who in turn may grant the extension only upon a showing of good cause.

5. If the applicant does not file a timely and responsive answer to the SOR, the Director, DOHA, or designee, may discontinue processing the case, deny issuance of the requested security clearance, and direct the DISCO to revoke any security clearance held by the applicant.

6. Should review of the applicant's answer to the SOR indicate that allegations are unfounded, or evidence is insufficient for further processing, Department Counsel shall take such action as appropriate under the circumstances, including but not limited to withdrawal of the SOR and transmittal to the Director for notification of the DISCO for appropriate action.

7. If the applicant has not requested a hearing with his or her answer to the SOR and Department Counsel has not requested a hearing within 20 days of receipt of the applicant's answer, the case shall be assigned to an Administrative Judge for a clearance decision based on the written record. Department Counsel shall provide the applicant with a copy of all relevant and material information that could be adduced at a hearing. The applicant shall have 30 days from